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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/257,208	02/25/1999	D. CHRISTOPHER DRYER	AM9-98-093	1871

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EXAMINER

SAX, STEVEN PAUL

ART UNIT	PAPER NUMBER
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2174  
DATE MAILED: 09/29/2003

21

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/257,208

Applicant(s)  
Dryer et al

Examiner  
Steve Sax

Art Unit  
2174



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 7/8/03
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 17 6) ☐ Other:

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### DETAILED ACTION

1. This application has been examined. The Rule 131 Declaration has been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tognazzini et al (5886683) and Black et al (5802220).

4. Regarding claim 1, Tognazzini et al show an unobtrusive system for detecting a subject's level of interest (column 5 lines 55-68, column 6 lines 1-7, column 9 lines 55-67, column 10 lines 1-15). Tognazzini et al show detecting what a subject is gazing at or 'attending to' (column 5 lines 54-68, column 6 lines 1-25, column 8 lines 5-19) to determine attentiveness to media images and objects on a network. The web browser information (column 11 lines 15-45) are all examples of media. The gaze tracker device (Tognazzini column 9 lines 45-60) is in real time. Tognazzini et al do not specifically show arousal level per se, but do show user characteristics (gazing) to determine interest. Furthermore, Black et al show arousal level by

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facial expressions (column 3 lines 37-65, column 4 lines 30-50, column 28 lines 30-57) to determine interest. It would have been obvious to a person with ordinary skill in the art to show arousal level in Tognazzini et al, because it would allow a convenient way to utilize user characteristics to determine interest.

5. Regarding claim 2, Tognazzini et al show as explained above the gaze determination.

6. Regarding claim 3, Tognazzini et al show determining the fixation time of the gaze (column 10 lines 35-44).

7. Regarding claim 4, Tognazzini et al show in column 11 lines 15-45 the detecting attention to media content.

8. Regarding claims 5-10, Black et al show measuring the subject's facial expressions, head gestures, and speech (column 27 lines 20-41, column 28 lines 30-60). The obviousness to combine is as stated above.

9. Regarding claim 11, Tognazzini et al show providing relevance feedback (column 6 lines 19-25).

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10. Claims 12-55 show the same features as above and are rejected for the same reasons.

11. Regarding claim 56, as noted, Black et al show measuring the facial and head gestures (column 8 lines 5-29). The claim recites 'includes one of...' and therefore since Ball et al show at least one of these elements, it therefore covers the claim.

12. Regarding claim 57, as noted, Tognazzini et al show the gaze fixation density and pupil size attribute (column 10 lines 35-44). Black et al show the audio utterance (speech), and upper body movement (head gesture) (again column 27 lines 20-41 and column 28 lines 30-60).

13. Regarding claim 58, Tognazzini shows providing additional media content as feedback (column 6 lines 19-25) and operates in real time (column 9 lines 45-60).

14. Claims 59-61 show the same features as above and are rejected for the same reasons.

15. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. But the Rule 131 Declaration does render the Ball reference as ineffective as grounds for rejection.

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16. Any inquiry concerning this communication should be directed to Steve Sax at telephone number (703) 305-9582.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve Sax whose telephone number is (703) 305-9582. The examiner can normally be reached on Monday - Friday from 8:30 AM to 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid, may be reached at (703) 308-0640.

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

(703) 872-9306

Official Communication

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.



STEVEN SAX  
PRIMARY EXAMINER